

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN S. ALLEN and U.S. POSTAL SERVICE,
POST OFFICE, Springport, Mich.

*Docket No. 97-1996; Submitted on the Record;
Issued March 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay because she failed to provide written notice of her injury within the time specified by the Federal Employees' Compensation Act.

On January 31, 1997 appellant, then a 49-year-old rural route mail carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on December 4, 1996 she injured her head and neck in a motor vehicle accident. Appellant stopped work on December 4, 1996 and returned to work on December 12, 1996.

On April 2, 1997 the Office accepted appellant's claim for a minor head injury and, by decision of that same day, denied continuation of pay because her claim was not filed within 30 days of the date of injury.

By letter dated April 23, 1997, appellant requested reconsideration of her claim. In support of her request, appellant submitted a statement dated April 22, 1997 from her supervisor, Deborah C. Drake. Ms. Drake indicated that she told one of appellant's coworkers to bring the Form CA-1 to appellant at the hospital but later realized that the Form CA-1 had not been filed.

By decision dated May 5, 1997, the Office denied modification of its prior decision.

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of the Act.

Section 8118 of the Act¹ provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time

¹ 5 U.S.C. §§ 8101-8193.

specified in section 8122(a)(2) of this title.”² The latter section provides that written notice of injury shall be given “within 30 days.” The context of section 8122 makes clear that this means within 30 days of the injury.³

In this case, appellant filed a Form CA-1 on January 31, 1997, which was more than 30 days after the December 4, 1996 injury. The responsibility for filing a claim rests with the injured employee.⁴ Moreover, section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitations provisions for filing a claim for compensation because of “exceptional circumstances” is not applicable to section 8118(a)⁵ which sets forth the filing requirements for continuation of pay.⁶ There is, therefore, no provision within the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury. Thus, since appellant filed the Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, more than 30 days after the December 4, 1996 employment injury, her claim for continuation of pay is barred by the applicable time limitation provision. This decision does not affect appellant’s possible entitlement to compensation in the form of medical benefits or wage-loss benefits.

The decisions of the Office of Workers’ Compensation Programs dated May 5 and April 2, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 3, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

² 5 U.S.C. § 8118.

³ See *George A. Harrell*, 29 ECAB 338 (1978).

⁴ See *Cathrine Budd*, 33 ECAB 1011 (1982).

⁵ 5 U.S.C. § 8118(a).

⁶ 5 U.S.C. § 8122(d)(3); see also *Dodge Osborne*, 44 ECAB 849 (1993).